



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,954	01/26/2004	David Miles	C241 1010.2	1774
26158 7590 08/17/2009 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC ATTN: PATENT DOCKETING P.O. BOX 7037 ATLANTA, GA 30357-0037				
EXAMINER				
BROOKS, KRISTIE LATRICE				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
08/17/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/630,954

**Applicant(s)**

MILES, DAVID

**Examiner**

KRISTIE L. BROOKS

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 104-124 is/are pending in the application.
- 4a) Of the above claim(s) 104-108 and 115-124 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 109-114 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of Group II, claims 109-114, in the reply filed on March 2, 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Therefore, claims 104-108 and 115-124 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention.

### ***Status of Claims***

2. Claims 104-124 are pending.

3. Claims 104-108 and 115-124 are withdrawn from further consideration as being drawn to a nonelected invention, and claims 109-114 are presented for examination below.

### ***Claim Rejections - 35 USC § 112 1<sup>st</sup>***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 109-114 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 109 introduces new matter as the claim recites the limitation "...about 1 part of an adjuvant per 300 parts cholorthalonil, the adjuvant comprising *about 20% by weight EDTA; about 5% by weight dicocodimethyl ammonium chloride; **about 15% by weight cocodimethyl amine**; and about 7% by weight propylene glycol*". There is no support in the specification for the phrase. The limitation of "*about 20% by weight EDTA; about 5% by weight dicocodimethyl ammonium chloride; about 15% by weight cocodimethyl amine; and about 7% by weight propylene glycol*" recited in claim 109, was not described in the specification as originally filed, and a person skilled in the art would not recognize in the applicant's disclosure a description of the invention as presently claimed. The specification discloses very specific adjuvant compositions. Adjuvant 6(*in water*) comprising about 20% by weight EDTA; about 5% by weight dicocodimethyl ammonium chloride; **about 1% by weight cocodimethyl amine**; and about 7% by weight propylene glycol (see the first paragraph on page 25 and Example 17 on page 39 in the instant specification). Thus, Adjuvant 6 is different from the instantly claimed adjuvant since it comprises only 1% by weight of cocodimethyl amine and it also comprises water (which is also not recited in the instant claim). There is no guidance in the specification on treating fungal growth on a plant with chlorothalonil and the instantly claimed adjuvant comprising 15% by weight cocodimethyl amine. And thus, the limitation of "*about 20% by weight EDTA; about 5% by weight dicocodimethyl*

*ammonium chloride; about 15% by weight cocodimethyl amine; and about 7% by weight propylene glycol*" is different in scope than what Applicant has support for.

Therefore, it is the Examiner's position that the disclosure does not reasonably convey that the inventor had possession of the subject matter of the amendment at the time of filing of the instant application.

Claims 109-114 are rejected for being dependent on a rejected claim.

***Claim Rejections – 35 USC § 112 2<sup>nd</sup>***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 109-110 and 113-114 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 109 recites "about 15 by weight cocodimethyl amine." It is unclear what Applicant intends. It is unclear if the composition comprises 15% by weight or whether some other unit of measurement is in place (i.e. 15 parts by weight, volume by weight, etc.) or whether it is a typographical error.

For purposes of examination, the Examiner has interpreted "15 by weight" to mean "15% by weight" in order to be consistent with the "% by weight" recited throughout the claim.

Claim 110 recites "...wherein the step of applying the composition to the plant is accomplished by a technique *chosen from* root application, leaf application, crop dusting, or spray application." The claim is in improper Markush format. The claim should recite "a technique selected from the group consisting of root application..."

Claim 113 recites "wherein the composition is applied at a rate of 1.25 pt/ac. It is unclear what is meant by "pt/ac". It is suggested that the abbreviated word is spelled out to clarify what Applicant intends.

Claim 114 recites "The method of claim 109, wherein the composition *further comprises* at least one additive..." This claim is improper and indefinite. Claim 109 recites "...a composition consisting of..." The language used (i.e. consisting of) in the independent claim when referring to the composition is closed ended. The composition cannot further include additional components.

### ***Conclusion***

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone

Art Unit: 1616

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/John Pak/  
Primary Examiner, Art Unit 1616